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# DISPUTE RESOLUTION ALERT

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### The value of careful analysis

Lawyers often write letters in which they demand that stuff is done, often by a deadline, usually in formal legal language designed to scare the recipient and ended with threats of legal action. It is often successful, but lawyers don't have any general authority to set deadlines or make demands and they rely on people giving up their power to resist. A lawyer only has actual authority because on the facts of the case their client has authority in law. The point is that the legitimacy of demands and deadlines and the potential success of threatened legal action should be carefully scrutinised before rights are given up and demands obeyed.

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KIETI LAW LLP, KENYA

## The value of careful analysis

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Author Alice Walker said it very well. *"The most common way people give up their power is by thinking they don't have any."*

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Lawyers often write letters in which they demand that stuff is done, often by a deadline, usually in formal legal language designed to scare the recipient and ended with threats of legal action. It is often successful, but lawyers don't have any general authority to set deadlines or make demands and they rely on people giving up their power to resist. A lawyer only has actual authority because on the facts of the case their client has authority in law. The point is that the legitimacy of demands and deadlines and the potential success of threatened legal action should be carefully scrutinised before rights are given up and demands obeyed. Author Alice Walker said it very well. *"The most common way people give up their power is by thinking they don't have any."*

This was illustrated in a dispute that arose in the North West Province where portions of some maize and sunflower farms were sold subject to suspensive conditions (*Bisschoff & Others v Welbeplan Boerdery (Pty) Ltd* (Case No. 815/2016) [2021] ZASCA 81). Pending finalisation of the sale it was agreed that the purchaser could access the farms and if the sale fell apart, the agreement would automatically convert to a 12-month lease. The suspensive

conditions weren't fulfilled, the sale collapsed, and the sale agreements duly converted to leases. The purchaser then breached the leases and received letters from the sellers' attorney confirming that the agreements had been cancelled and telling it not to trespass on the land. The purchaser complained to the High Court that the lawyer's letters were an act of spoliation which prevented it from accessing the land without any court process. The High Court agreed saying that the words used in the lawyer's letters were equal *"to putting a lock at the gate physically"*.

The Supreme Court of Appeal analysed the letters and pointed out that the application in the High Court was for a mandament van spolie, for the return of possession of property where the applicant was unlawfully deprived of its prior peaceful and undisturbed possession. The court said there must be an actual loss of possession, that the mere threat to approach a court in the circumstances of this case could not constitute unlawful deprivation of the purchaser's control of the land, nor self-help and the High Court should not have to granted the order that it did.

A sensible conclusion.

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*Tim Fletcher*

## 2021 RESULTS

**CDH's Dispute Resolution practice** is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2021.  
**Tim Fletcher** is ranked as a Leading Individual in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Eugene Bester** is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Jonathan Witts-Hewinson** is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Pieter Conradie** is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Rishaban Moodley** is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Lucinde Rhoodie** is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2021.  
**Kgosi Nkaiseng** is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2021.  
**Tim Smit** is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2021.  
**Gareth Howard** is ranked as a Rising Star in THE LEGAL 500 EMEA 2021.

**CDH's Construction practice** is ranked in Tier 2 in THE LEGAL 500 EMEA 2021.  
**Clive Rumsey** is ranked as a Leading Individual in Construction in THE LEGAL 500 EMEA 2021.  
**Joe Whittle** is recommended in Construction in THE LEGAL 500 EMEA 2021.  
**Timothy Baker** is recommended in Construction in THE LEGAL 500 EMEA 2021.  
**Siviwe Mcetywa** is ranked as a Rising Star in Construction in THE LEGAL 500 EMEA 2021.



## 2021 RESULTS

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 1: Dispute Resolution.

CHAMBERS GLOBAL 2018 - 2021 ranked our Dispute Resolution practice in Band 2: Insurance.

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.

CHAMBERS GLOBAL 2020 - 2021 ranked our Corporate Investigations sector in Band 3: Corporate Investigations.

Chambers Global 2021 ranked our Construction sector in Band 3: Construction.

Chambers Global 2021 ranked our Administrative & Public Law sector in Band 3: Administrative & Public Law.

Pieter Conradie ranked by CHAMBERS GLOBAL 2019 - 2021 as Senior Statespeople: Dispute Resolution.

Clive Rumsey ranked by CHAMBERS GLOBAL 2013-2021 in Band 1: Construction and Band 4: Dispute Resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2021 in Band 3: Dispute Resolution.

Tim Fletcher ranked by CHAMBERS GLOBAL 2019 - 2021 in Band 3: Dispute Resolution.

Joe Whittle ranked by CHAMBERS GLOBAL 2020 - 2021 in Band 3: Construction

Tobie Jordaan ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming Restructuring/Insolvency lawyer.



CDH IS THE EXCLUSIVE MEMBER FIRM IN AFRICA FOR THE:

**Insuralex Global Insurance Lawyers Group**  
(the world's leading insurance and reinsurance law firm network).

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### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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